

Department of State

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defense services without complying with the registration requirements. For the purposes of this subchapter, engaging in the business of manufacturing or exporting defense articles or furnishing defense services requires only one occasion of manufacturing or exporting a defense article or furnishing a defense service; or

(6) To engage in the business of brokering activities for which registration, a license or written approval is required by this subchapter without first registering or obtaining the required license or written approval from the Directorate of Defense Trade Controls. For the purposes of this subchapter, engaging in the business of brokering activities requires only one occasion of engaging in an activity as reflected in § 129.2(b).

(b) Any person who is granted a license or other approval under this subchapter is responsible for the acts of employees, agents, and all authorized persons to whom possession of the licensed defense article or technical data has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article or technical data abroad. All persons abroad subject to U.S. jurisdiction who obtain temporary custody of a defense article exported from the United States or produced under an agreement described in part 124 of this subchapter, and irrespective of the number of intermediate transfers, are bound by the regulations of this subchapter in the same manner and to the same extent as the original owner or transferer.

(c) A person with knowledge that another person is then ineligible pursuant to § 120.1(c) or § 126.7 of this subchapter or subject to an order of debarment or interim suspension, may not, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to, and written authorization from, the Directorate of Defense Trade Controls:

(1) Apply for, obtain, or use any export control document as defined in § 127.2(b) for such debarred, suspended, or ineligible person; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any transaction which

may involve any defense article or the furnishing of any defense service for which a license or approval is required by this subchapter for export, where such debarred, suspended, or ineligible person may obtain any benefit therefrom or have any direct or indirect interest therein.

(d) No person may knowingly or willfully cause, or aid, abet, counsel, demand, induce, procure or permit the commission of any act prohibited by, or the omission of any act prohibited by, or the omission of any act required by 22 U.S.C. 2778, 22 U.S.C. 2779, or any regulation, license, approval, or order issued thereunder.

[58 FR 39316, July 22, 1993, as amended at 71 FR 20548, Apr. 21, 2006]

§ 127.2 Misrepresentation and omission of facts.

(a) It is unlawful to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any defense article or technical data or the furnishing of any defense service for which a license or approval is required by this subchapter. Any false statement, misrepresentation, or omission of material fact in an export or temporary import control document will be considered as made in a matter within the jurisdiction of a department or agency of the United States for the purposes of 18 U.S.C. 1001, 22 U.S.C. 2778 and 22 U.S.C. 2779.

(b) For the purpose of this section, *export or temporary import control documents* include the following:

(1) An application for a permanent export or a temporary import license and supporting documents.

(2) Shipper's Export Declaration.

(3) Invoice.

(4) Declaration of destination.

(5) Delivery verification.

(6) Application for temporary export.

(7) Application for registration.

(8) Purchase order.

(9) Foreign import certificate.

(10) Bill-of-lading.

(11) Airway bill.

(12) Nontransfer and use certificate.

(13) Any other document used in the regulation or control of a defense article, defense service or technical data

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for which a license or approval is required by this subchapter.

§ 127.3 Penalties for violations.

Any person who willfully:

(a) Violates any provision of section 38 or section 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779), or any undertaking specifically required by part 124 of this subchapter; or

(b) In a registration, license application or report required by § 38 or § 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or by any rule or regulation issued under either section, makes any untrue statement of a material fact or omits a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be subject to a fine or imprisonment, or both, as prescribed by 22 U.S.C. 2778(c).

[58 FR 39316, July 22, 1993, as amended at 71 FR 20549, Apr. 21, 2006]

§ 127.4 Authority of U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers.

(a) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers may take appropriate action to ensure observance of this subchapter as to the export or the attempted export of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft. This applies whether the export is authorized by license or by written approval issued under this subchapter.

(b) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers have the authority to investigate, detain or seize any export or attempted export of defense articles or technical data contrary to this subchapter.

(c) Upon the presentation to a U.S. Customs and Border Protection Officer of a license or written approval authorizing the export of any defense article, the customs officer may require the production of other relevant documents and information relating to the proposed export. This includes an invoice, order, packing list, shipping document, correspondence, instructions, and the documents otherwise required

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by the U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement.

[70 FR 50965, Aug. 29, 2005]

§ 127.5 Authority of the Defense Security Service.

In the case of exports involving classified technical data or defense articles, the Defense Security Service may take appropriate action to ensure compliance with the Department of Defense National Industrial Security Program Operating Manual (unless such requirements are in direct conflict with guidance provided by the Directorate of Defense Trade Controls, in which case the latter guidance must be followed). Upon a request to the Defense Security Service regarding the export of any classified defense article or technical data, the Defense Security Service official or a designated government transmittal authority may require the production of other relevant documents and information relating to the proposed export.

[71 FR 20549, Apr. 21, 2006]

§ 127.6 Seizure and forfeiture in attempts at illegal exports.

(a) An attempt to export from the United States any defense articles in violation of the provisions of this subchapter constitutes an offense punishable under section 401 of title 22 of the United States Code. Whenever it is known or there is probable cause to believe that any defense article is intended to be or is being or has been exported or removed from the United States in violation of law, such article and any vessel, vehicle or aircraft involved in such attempt is subject to seizure, forfeiture and disposition as provided in section 401 of title 22 of the United States Code.

(b) Similarly, an attempt to violate any of the conditions under which a temporary export or temporary import license was issued pursuant to this subchapter or to violate the requirements of § 123.2 of this subchapter also constitutes an offense punishable under section 401 of title 22 of the United States Code, and such article, together with any vessel, vehicle or aircraft involved in any such attempt is subject